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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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EXAMINER

DANIEL JR, WILLIE J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2686

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/919,858

Applicant(s)

SATO ET AL.

Examiner

Willie J. Daniel, Jr.

Art Unit

2686

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 21 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO 449) Paper No(s): \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
**CHARLES APPIAH  
PRIMARY EXAMINER**

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 21 June 2005 have been fully considered but they are not persuasive. Examiner respectfully disagrees with applicant's arguments as the applied reference(s) provide more than adequate support and to further clarify (see comments in this section and Final Action mailed on 21 April 2005).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Regarding applicant's argument of claim 21 on pg. 3, 2<sup>nd</sup> paragraph, "Kumar does not teach a wireless terminal that includes a control part configured to discontinue transmission of the retransmission request for the predetermined information when notified of the retransmission information which indicates that a retransmission request for the predetermined information has been made from another wireless terminal within the arbitrary service area at a timing before the retransmission request is made", the Examiner respectfully disagrees. Kumar teaches of a wireless terminal (FDSP client) that includes a control part (FDSP) configured to discontinue transmission of the retransmission request for the predetermined information when notified of the retransmission information which indicates that a retransmission request for the predetermined information has been made from another wireless terminal (724) within the arbitrary service area at a timing before the retransmission request is made (see col. 6, lines 50-51, 65-67; col. 7, lines 21-24; col. 8, lines 35-44, 52-61; col. 13, lines 2-7; Figs. 4 'ref. 405', 12 'ref. 1204' 'ref. 1210'), where the FDSP client provides an acknowledgement indicating the data file was received before the end of the TTL packet in which the FDSP server would not retransmit the information that has been distributed. Kumar has a FDSP client (722) that uses a FDSP protocol (see col. 6, lines 45-51; Fig. 7), where the client utilizes the FDSP protocol in which a control part is inherent to control operations.

Regarding applicant's argument of claims 1, 6, 11, and 18 on pg. 4, 2<sup>nd</sup> paragraph, "...fails to teach the retransmission of the information requested by the retransmission information from the wireless terminal...", the Examiner respectfully disagrees. Kumar teaches of the retransmission of the information requested by the retransmission information from the wireless terminal (722) (see col. 6, line 65 - col. 7, line 4; col. 7, lines 4-10, 21-24; col. 8, lines 38-47), where the FDSP client transmits a retransmission request for the retransmission of packets related to a particular data file. Also, Fukushima teaches of the retransmission of the information requested by the retransmission information from the wireless terminal (e.g., visual terminal or mobile telephone) (see col. 1-2, [0009-0010]; col. 19, [0064]; col. 20, [0070-0071]; Figs. 3, 28b), where the terminal request retransmission. Therefore, the combination of Kumar and Fukushima both teaches of the feature.

Regarding applicant's argument of claims 16 and 17 on pg. 5, 1<sup>st</sup> paragraph, "...fails to teach a wireless terminal having the timing determinatio part that is configured to determine timing for transmitting the retransmission request for the information which requires retransmission...", the Examiner respectfully disagrees. The combination of Kumar, Chiu, and Fukushima teaches of a wireless terminal having the timing determination part that is configured to determine a timing for transmitting the retransmission request for the information which requires retransmission (see col. 6, line 65 - col. 7, line 21; col. 8, lines 35-49; col. 12, lines 16-30; Figs. 4, 6, 11, 12B), where the FDSP client transmits a retransmission request when the client has determined that the data multicasted has not been received in which the timing determination means would be inherent by acknowledging the TTL packet for requested retransmission

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., ...fails to teach that the retransmission information includes timing information indicating the predetermined timing at which the information will be transmitted...) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding applicant's argument of claims 16 and 17 on pg. 5, 1<sup>st</sup> paragraph, "...fails to teach that the retransmission information includes timing information indicating the predetermined timing at which the information will be transmitted...", the Examiner respectfully disagrees. The limitation of claims 16 and 17 recites "...the information will be retransmitted..." in which applicant's argument is based on the information transmitted. The combination of Kuma, Chiu, and Fukushima teaches of retransmission information includes timing information indicating the predetermined timing at which the information will be retransmitted (see Fukushima - col. 27, [0113]; col. 28, [0122] lines 48-55; col. 30, [0140] lines 40-46; col. 57, [0325] - col. 58, [0329]; Figs. 12, 14, 34a-c), where the server manages the distribution of retransmitting packets which includes the information related to the packet.

Regarding claims 2-5, 7-10, 12-15, 19-20, 22, the claims are rejected for the same reasons as set forth above and as applied in final action mailed on 21 April 2005.